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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL HERMAN, an individual,)	Case No. '17CV1769 BEN NLS
)	
Plaintiff,)	COMPLAINT FOR DAMAGES
)	
vs.)	
)	
NORTH AMERICAN COMMUNICATIONS,)	
INC.,)	
)	
Defendant.)	DEMAND FOR JURY TRIAL

Plaintiff MICHAEL HERMAN, for causes of action against Defendants, and each of them, alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff MICHAEL HERMAN, ("Plaintiff" or "Herman") is an individual residing in the City and County of San Diego, state of California, within the jurisdiction of this Court.

2. Defendant NORTH AMERICAN COMMUNICATIONS, INC., ("Defendant" or "NAC") is a corporation organized and existing under the laws of the commonwealth of Pennsylvania and conducting, and having conducted, business within the jurisdiction of this Court.

1 copy of Plaintiff's demand for payment is attached hereto and marked as Exhibit "C" and incorporated
2 herein by reference.

3 10. Plaintiff has done all things on his part to be done in accordance with the Agreement,
4 including the tendering of his resignation from the board of NAC as evidenced by Exhibit "B" hereof,
5 except for such matters, if any, that Plaintiff was prevented from undertaking and performing due to
6 Defendant's wrongful conduct.

7 11. Defendant NAC's failure and refusal to pay the sums owed pursuant to the Agreement,
8 was wrongful, without excuse, or justification and constituted a breach of the Agreement.

9 12. The Agreement further provides that in the event of legal proceedings for breach of the
10 Agreement, the prevailing party will be entitled to attorneys' fees and costs and pursuant to California
11 Civil Code § 1717. Plaintiff is also the beneficiary of such attorneys' fees provision.

12 13. As a direct and proximate result of Defendant's breach of the Agreement, Plaintiff has
13 sustained damage and injury all to his loss in the sum \$4,786,664 which losses continue to accrue from,
14 and following the date of this Complaint at the rate of \$130,000 per month until paid in full.

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16 **SECOND CAUSE OF ACTION**

17 **QUANTUM MERUIT**

18 14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1
19 through 13 as though fully set forth herein.

20 15. Plaintiff is informed and believes and thereupon alleges that during the last forty years,
21 Plaintiff formed, operated, developed, and built NAC into an influential, dynamic, profitable and well-
22 run printing company with offices and facilities located throughout the United States and Mexico.
23 During those years, Plaintiff invested his time, effort, labor, skills, influence, trust and opportunities
24 ("Investments") to and for the benefit of NAC and without such Investments, NAC would not be the
25 successful and profitable entity that it was at the time of the Agreement through the present.

26 16. Plaintiff's retirement payments as provided in the Agreement were in compensation for
27 his Investments in NAC and NAC was enriched by such Investments however, Plaintiff was denied the
28 compensation bargained for and to be received by the terms of the Agreement.

1 17. Plaintiff is therefore entitled to compensation in the form of *quantum meruit* for his
2 Investments into NAC in the sum computed at the rate of \$130,000 per month commencing June 21,
3 2013 and through the present with NAC being credited in the sum of \$1,700,000 for payments made
4 pursuant to the Agreement.

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6 **THIRD CAUSE OF ACTION**

7 **BAD FAITH DENIAL**

8 18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1
9 through 17 as though fully set forth herein.

10 19. The Agreement included an implied Covenant of Good Faith and Fair Dealing, which
11 operated to prohibit either party to the Agreement from doing any act or refusing to perform an act
12 which would deny to the other the fruits and benefits reasonably anticipated to be received by a party's
13 performance thereon.

14 20. At all times herein mentioned, Plaintiff has done all the acts and refrained from doing
15 prohibited acts, as required by the Agreement including, without limitation, resigning as a member of
16 the board of directors of NAC and further observing all of the covenants of the Agreement on his part to
17 be observed.

18 21. Defendant NAC's failure and refusal to make payments under the Retirement Agreement
19 as alleged above was a violation of the Covenant of Good Faith and Fair Dealing.

20 22. Plaintiff is informed and believes and thereupon alleges that Defendant's officers have
21 repudiated and denied any obligation on the part of Defendant to pay the balance owed under the
22 Agreement, or any sum whatsoever.

23 23. Plaintiff is informed and believes and thereupon alleges that at all times herein
24 mentioned, and including the present, Defendant possessed adequate funds to pay a substantial portion
25 of the past due sums owed to Plaintiff but it has diverted those funds to enrich Defendant's officers and
26 directors by payment of six figure bonuses and associated disbursements.

27 24. As a direct and proximate result of Defendant's bad faith conduct including denying a
28 subsisting obligation to pay what is owed under the Agreement, Plaintiff has sustained damages equal to

1 the remaining sum owed including future scheduled payments, and such other and further losses proven
2 at time of trial.

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4 **JURY DEMAND**

5 25. Plaintiff demands a trial before a jury for all issues so triable.

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7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff prays judgment against Defendant, and each of them, for the
9 following:
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- 11 1. compensatory damages for the sum of no less than \$4,786,664 in accordance with proof
12 at trial;
- 13 2. special damages in accordance with proof at trial;
- 14 3. reasonable attorney's fees pursuant to California Civil Code § 1717;
- 15 4. prejudgment interest on all sums found due;
- 16 5. costs and expenses of suit herein incurred; and
- 17 6. such other and further relief as the Court deems just and appropriate.
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20 DATED: August 28, 2017

HOLTHAUS apc

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23 By: 

Douglas D. Holthaus, Esq.

Attorneys for Plaintiff MICHAEL HERMAN

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